

ASARCO

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Office of Enforcement
Compliance & Environmental
Justice

Linda Jacobson
RCRA Project Manager
US EPA Region VIII
8ENF-T
999 18th Street, Suite 300
Denver, Colorado 80202-2466

June 4, 2004

SENT BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

**CONSENT DECREE
CIVIL ACTION NO. CV 98-3-H-CCL
EAST HELENA SITE
WORK PERFORMED IN MAY 2004
PROGRESS REPORT #73**

Dear Ms. Jacobson:

On May 5, 1998, Asarco Incorporated (Asarco) and the United States Environmental Protection Agency (EPA) entered into a Consent Decree (Decree) to further the objectives of the Resource Conservation and Recovery Act (RCRA) and the Clean Water Act (CWA). Section XI of the Decree (Reporting: Corrective Action) requires Asarco to submit certified monthly progress reports to EPA which discuss the actions taken by Asarco in achieving compliance with the Decree. The reports are to be submitted to EPA no later than the twentieth (20th) day of the following month. The following describes only those activities that have occurred or are related to projects performed during May 2004. The historical actions taken by Asarco in achieving compliance with the Decree are contained in previous monthly progress reports.

- a. **Describe the actions, progress, and status of projects which have been undertaken pursuant to Part VII of the Decree;**

The Phase I RFI Site Characterization draft Report was submitted to EPA on April 1, 2003. Asarco awaits EPA's response to this document.

In a letter dated May 10, 2004, Asarco was notified that you had been designated as EPA's new RCRA project manager for the East Helena site. Accordingly, all documents, reports, approvals, and correspondence concerning the activities performed under the terms and conditions of the Consent Decree will be sent directly to you.

During May 2004, Asarco completed the semi-annual residential groundwater well sampling outlined in Asarco's on-going Post Remedial Investigation (RI)/Feasibility Study (FS), Long Term Monitoring Program. On May 5, 2004, eleven residential groundwater well locations were sampled. Six additional residential groundwater well locations were sampled on May 26, 2004.

Asarco did not receive any shipments of Permeable Reactive Barrier iron metal aggregate at the East Helena Plant during the month of May 2004. EPA has notified Asarco that an alternate contractor (Yowell International) has been selected to transport the iron metal aggregate from Peerless Metal Powders and Abrasive to the East Helena Plant.

In documents dated May 3rd, 13th, 14th, and 27th, 2004, Asarco forwarded to the Asarco environmental trustee four Contractor Claim Forms and one Reimbursable Expense Claim Form for work that was performed under the on-going Post Remedial Investigation (RI)/Feasibility Study (FS), Long Term Monitoring Program at the East Helena site.

A summary of the correspondence transmitted as part of the East Helena Consent Decree in May 2004 is included in Attachment 1.

- b. Identify any requirements under the Part VII of the Decree that were not completed in a timely manner, and problems or anticipated problem areas affecting compliance with the Decree;**

There were no requirements that were not completed in a timely manner nor were there problems or anticipated problem areas that affect compliance with the Decree. The irrigation groundwater well located at the St. Germaine home was not in service and could not be sampled as part of the May 2004 semi-annual residential groundwater well Post Remedial Investigation (RI)/Feasibility Study (FS), Long Term Monitoring Program.

- c. Describe projects completed during the prior month, as well as activities scheduled for the next month;**

In accordance with the March 2000 Groundwater Source Control Interim Measures Design Analysis, Plans, and Specification report, the speiss handling area and the former acid plant sediment drying area are being inspected monthly with the last inspection occurring on May 4, 2004. This monthly inspection documented the condition of the interim measures. The inspection confirmed that all scheduled interim measures were in place.

Phase III Sparge Testing – Asarco completed the operation and monitoring of the sparge systems at the SPAR-1 and SPAR-3 sites in December 2002. The data obtained from this testing will be included as an addendum to the Phase I RFI Site Characterization draft Report.

CAMU Landfill - The construction of the CAMU landfill is complete. The Final Construction Report for the CAMU-Phase 1 Cell was hand-delivered to EPA on January 23, 2002. In accordance with the July 2000 CAMU Design Analysis Report (Operation and Maintenance Plan), the CAMU is being inspected monthly with the last inspection occurring on May 6, 2004. This monthly inspection documented the condition of the CAMU.

RCRA Facility Investigation (RFI) - The Phase I RFI Site Characterization draft Report was submitted to EPA on April 1, 2003.

d. Describes, and estimates the percentage of studies completed;

The original bench-scale testing program for the Phase III air sparge test is 100% complete. The testing has been expanded to include additional column tests. The additional testing is 100% complete. The sparge pilot test program is 100% complete.

The RFI groundwater modeling is 100% complete. The results of this modeling exercise have been included in the Phase I RFI Site Characterization draft Report.

The Interim Measures Work Plan Addendum (May 2002) and responses to EPA's July 1, 2002 comments are 100% complete.

The implementation (field investigations) of the Interim Measures Work Plan Addendum (May 2002, and its revisions) is 100% complete.

e. Describe and summarize all findings to date;

The details of past findings through April 2004 are described and summarized in previous monthly progress reports.

f. Describe actions being taken to address problems;

There were no actions taken to address problems associated with the Decree.

g. Identify changes in key personnel during the period;

Asarco continues to use the services of Asarco Consulting Incorporated and Hydrometrics Incorporated to perform the various activities required under the Consent Decree. The Consent Decree activities will continue to be administrated under the direction of Robert Miller.

h. Include copies of the results of sampling and tests conducted and other data generated pursuant to work performed under Part VII of the Decree since the last Progress Report. Asarco may submit data that has been validated and confirmed by Asarco to supplement any prior submitted data. Updated

validated and confirmed data shall be included with the RFI Report, if not delivered before;

No data are attached to this May 2004 monthly progress report.

- i. Describe the status of financial assurance mechanisms, including whether any changes have occurred, or are expected to occur which might affect them, and the status of efforts to bring such mechanisms back into compliance with the requirements of this Decree.**

ASARCO is still unable, at this time, to make the required financial assurance demonstration using the mechanisms outlined in the East Helena Consent Decree. However, EPA agreed in paragraph 36 of the subsequent national consent decree (U.S. v. ASARCO and Southern Peru Holdings Corp., No. CV 02-2079-PHX-RCB (entered February 3, 2003)) to forego penalties for any noncompliance with financial assurance requirements in RCRA or CERCLA consent decrees (such as the East Helena decree) in calendar years 2003-2005. (Paragraph 35 of the decree also forgoes penalties for past inability to demonstrate financial assurance from December 1997 to the entry of the Decree.) ASARCO continues to try and improve its financial position and hopes to be able to make the required financial assurance demonstration in the future.

CERTIFICATION
PURSUANT TO U.S. v ASARCO INCORPORATED
(CV-98-3-H-CCL, USDC, D. Montana)

I certify under penalty of law that this document, May 2004 Progress Report and all attachments, were prepared under my direct supervision in accordance with a system designed to assure that qualified personnel gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations.

Signature *D. E. McAllister*
Name: Douglas E. McAllister
Title: Vice President
Date: June 2, 2004

CONSENT DECREE
EAST HELENA SITE
MAY 2004 PROGRESS REPORT

SUMMARY OF CORRESPONDENCE
ATTACHMENT 1

DATE OF TRANSMITTAL	CORRESPONDENCE SENT FROM	CORRESPONDENCE SENT TO	SUBJECT	RESPONSE
May 3, 2004 May 13, 2004 May 14, 2004 May 27, 2004 (2)	Jon Nickel	Daniel Silver	Four Contractor Claim Forms and One Reimbursable Expense Claim Form for RCRA Consent Decree Activities	No Formal Response Required

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